THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :21359 OF 2006

DATED:21-09-2007

BETWEEN:

Mohd.Shamshuddin.

..... PETITIONER

AND

The Executive Engineer,
Central Division,
Andhra Pradesh Housing Board,
MJ Road,
Hyderabad & another.

.....RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus declaring the action of the respondents in evicting the petitioner from shop No.1 of the Andhra Pradesh Housing Board Complex, Mahaboob gunj, Hyderabad, as illegal and arbitrary.

2. Petitioner is the tenant of Shop No.1 of the A.P.Housing Board complex, Mahaboob gunj, Hyderabad, which was originally leased out in favour of one Rustum Ahmed Khan and he was a tenant of the said shop for a period of five years and the lease expired by 10-07-2002. While so, the Competent Authority/Tribunal Central Division under the A.P.Housing Board Act, 1956 (for short, 'the Act') issued a notice, dated 23-08-2004, to the said Rustum Ahmed Khan stating that he has not paid the rent due for more than two months in respect of the said premises in question and he has acted in contravention of the permission under which he was authorized to occupy and use the premises. The eviction notice was not on the ground of sublease or unauthorized occupation, but it was only on the ground of default of payment of rent and the original tenant has acted in contravention of the terms under which he was authorized to occupy and use the said premises. Accordingly, a case was filed by the A.P.Housing Board before the Competent Authority-Tribunal, Central Division under the said Act against the said Rustum Ahmed Khan, tenant of shop No.1. The Competent Authority passed order in proceedings No.1/CA/Central/2004, dated 23-08-2004, evicting the said Rustum Ahmed Khan. Against the said order the said Rustum Ahmed Khan represented by the petitioner-Mohammed Shamshuddin filed C.M.A.No.268 of 2004 before the Chief Judge, City Civil Court,

Hyderabad contending that the petitioner herein succeeded the tenancy from the original tenant-Rustum Ahmed Hussain under the agreement made in the year, 1969 and the original tenant died in the year 1990. The son of the original tenant namely Syed Abbas Hussain continued the transport business which was run by the original tenant, his father, and succeeded to the tenancy rights as his legal heir with the consent of other family members. Later petitioner herein commenced a partnership business in the said premises by entering into a partnership deed, dated 13-11-1992, with the son of the original tenant namely Syed Abbas Hussain. Due to financial problems the said Syed Abbas Hussain withdrew from the partnership and the petitioner alone is remitting the rents and thus he is the tenant of the said premises.

3. Learned Chief Judge considered the said contentions and dismissed the appeal on the grounds mentioned at paras 8 to 13, which are as follows:-

> "8. Two grounds were raised in Form A and Form B notices that the appellant did not pay rent for more than two months, that the rent was not paid from July 2004 and that the appellant contravened the terms under which he was authorized to occupy the premises. The first of these contentions is proved to be incorrect. Form B notice was issued on 23-08-2004. While so, the appellant deposited rent at Rs.1,521/- for the months of July, August and September 2004 by paying the same as early as on 02-07-2004. Perhaps there was confusion in the accounting section of the Housing Board. At any rate, the appellant paid rents for two months from July 2004 onwards. Consequently the ground on which the appellant is sought to be evicted, viz., that the appellant did not pay rents, stands negated. The order of the competent authority is liable to be set aside on the ground that the basis of the order of eviction is bad inasmuch as the ground is that the appellant failed to remit the rents. The appeal deserves to be allowed on this count.
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> 9. A more important issue arises for consideration. I had narrated at the very beginning that Rustum Ahmed Hussain

was the original tenant and that Syed Abbas Hussain, son of the original tenant succeeded to the tenancy. Now one Rustum Ahmed claims to be the tenant. He is the appellant herein. He has no relationship by consanguinity with the original tenant Rustum Ahmed Hussain. He was a partner of the son of the original tenant. It is the contention of the learned counsel for the respondents that the tenancy passed on to an utter stranger to the tenancy and that the appellant as a stranger to the tenancy, cannot squat over the property.

10. The learned counsel for the appellant contended that he is not a stranger to the original tenant. The appellant claims that he entered into partnership with Syed Abbas Hussain, son of the original tenant through a partnership deed, dated 13-11-1992 and that when the said Syed Abbas Hussain retired from the partnership firm owing to financial difficulties, he became the absolute owner of the business and tenant of the business premises. The circumstances in which the appellant has been on the schedule property shall be viewed rather strictly since Housing Board Act is to provide relief to the needy tenants. Manipulations shall be frowned in this context.

11. The situation may be explained in metaphysical terms. A is the tenant. On his death, his son, who is A-S took over the tenancy. B, a stranger to A's family joins A-S as a partner and starts enjoying the joint tenancy. Later A-S retires. B continues as a tenant. This is the situation in the present case.

12. The appellant has no communication whatsoever with the original tenant. His tenancy was as a partner of the son of the original tenant. He claims that he took over the tenancy with the consent of the original tenant, who retired from partnership. I am afraid that the appellant cannot take such a stand. Appellant cannot be considered to be a tenant of the premises at any given time. He was a partner of the tenant viz., Syed Abbas Hussain, son of the original tenant. When the son as the legal representative of the original tenant retired from partnership, it is the sole proprietor concern which should go out and not the son of the original tenant. The appellant has no right to continue to claim to be the tenant of the premises. If this situation is permitted, anybody can become a tenant or other legal character by manipulation.

13. I am not concerned whether the appellant has been claiming to be the tenant through manipulation and malpractice or otherwise. Assuming that appellant and the

son of the original tenant bona fide entered into a partnership deed and assuming that the son of the original tenant retired from the partnership bona fide owing to financial constraints, the appellant has no right to claim that he is the tenant. He was never the tenant and cannot be the tenant claiming through the original tenant and the son of the original tenant. Thus, the squatting of the property by the appellant is certainly in violation and contravention of the terms of allotment. Consequently the notice issued under Form D is just and proper. The order of eviction by the competent authority cannot be questioned by the appellant. The appeal is found to be devoid of merits. The appeal accordingly is dismissed. No costs."

4. In view of the aforesaid findings, it is to be seen that admittedly, the petitioner is not at all a tenant and he is not the legal heir of the original tenant and the eviction proceedings are against the original tenant only and the petitioner is not a party either before the Competent Authority or before the Chief Judge, City Civil Court, Hyderabad. Therefore, I am of the opinion that it is not open for the petitioner to seek a Writ of Mandamus declaring the action of the respondents in evicting him from Shop No.1 of the Andhra Pradesh Housing Board Complex, Mahaboob gunj, Hyderabad, as illegal and arbitrary. Further, the petitioner has not questioned the eviction order, as confirmed by the Appellate Authority i.e., Chief Judge, City Civil Court, Hyderabad in C.M.A.No.268 of 2004. Therefore, this writ petition is misconceived, not maintainable, and the same is liable to be dismissed.

5. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

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21-09-2007

Prv/Tsy